



Circuit Court
County of Oakland

WENDY POTTS
CHIEF CIRCUIT JUDGE

1200 N TELEGRAPH RD DEPT 404
PONTIAC MI 48341-0404

SIXTH JUDICIAL CIRCUIT
OF MICHIGAN
(248) 858-0365
FAX 248-975-9787

April 14, 2008

Corbin R. Davis
Michigan Supreme Court Clerk
P.O. Box 30052
Lansing, MI 48909

Re: ADM File No. 2006-16

Dear Mr. Davis:

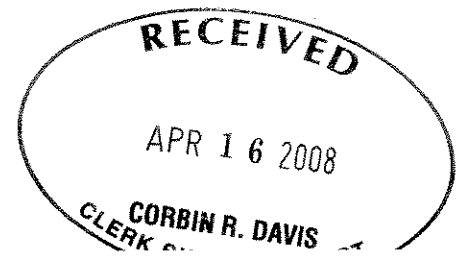
The Oakland Circuit Bench opposes the proposed changes to Michigan Court Rules 6.302 and 6.310.

The staff comment states that the changes are designed to "make the rules consistent with the federal rules, which preclude judicial involvement in negotiating plea agreements and limit the ability of defendants to withdraw guilty pleas." Effectively, these rule changes would overrule *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993).

In 2007, 6,482 criminal cases were filed in the Oakland County Circuit Court. By comparison, the Federal District Court for Michigan (Eastern and Western Districts) saw 876 criminal cases filed during the twelve month period ending March 31, 2007. Our court has fourteen judges assigned to the criminal division, and one of those, the Chief Judge, has a fifty percent reduction in her docket. The Federal District Court for Michigan (Eastern and Western Districts) has twenty eight judges and twelve magistrates. The obvious disparity in caseloads belies any valuable comparison.

The changes will make our criminal docket, and those of Michigan's larger counties, inefficient and ineffective. *Cobbs* pleas are indispensable to the efficient administration of our criminal justice system. Furthermore, in practice, the proposed rule changes will not eliminate a judge's participation in the plea process.

Proposed Rule 6.302 would create additional work for an already burdensome criminal docket. Plea negotiations between the prosecutor and defense counsel will be prolonged under the rule changes because the parties will attempt to craft specific sentence agreements, and the prosecutor may require a pre-disposition report before



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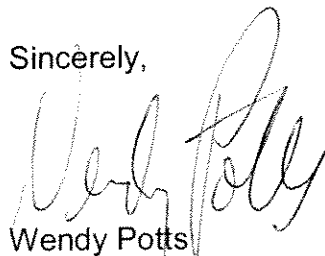
agreeing to negotiate. Though the federal system may have the time and resources to accommodate this type of negotiation, our system does not.

Proposed Rule 6.310 would have the same effect because it requires a judge who cannot abide by the terms of the sentencing agreement to "state the sentence it intends to impose." When defendants learn this information, they will simply withdraw their pleas, and take their chances at trial. If a defendant is convicted at trial, the rule changes raise serious questions about the judge's ability to exceed the sentence that was previously indicated to the defendant. The rule is vague as to the issue of whether the sentence applies only to the plea agreement, or to any trial resulting from the withdrawal of the defendant's plea.

The second argument against these rule changes is, perhaps, stronger. The old adage about not fixing something that isn't broken seems to apply to this scenario. Examined critically, these proposed changes in the Court Rules are illusory. They will not extricate the judge from the plea process. The judge will continue to be an intricate part of the process, because the judge is required to approve any agreement between the parties.

We ask the Court to carefully consider the effect of the proposed changes on Michigan's criminal trial courts. We urge you to reject the proposed amendments.

Sincerely,

A handwritten signature in black ink, appearing to read "Wendy Potts", written over a horizontal line.

Wendy Potts
Chief Judge

WP:she
cc: Oakland County Circuit Judges
Chief Probate Judge – Elizabeth Pezzetti